

REMARKS/ARGUMENTS

Claims 1–19 are pending in the captioned application. The Examiner has required restriction under 35 U.S.C. § 121 of the following invention:

- I. Claims 1 and 5-13, drawn to method of measuring cellular processes in different cell populations adhered to scintillant particles, classified in class 436, subclass 528, for example.
- II. Claims 2, 3, and 4, drawn to method of measuring effect of test substance in different cell populations adhered to scintillant particles, classified in class 435, subclass 7.92, for example.
- III. Claims 14-19, drawn to product for cell-based assays, classified in class 436, subclass 524, for example.

The Examiner states, “the inventions are distinct, each from the other because of the following reasons”. Regarding I and II, the Examiner states, “Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects...In the instant case the different inventions have different modes of operation and different functions in that cell populations in Invention I are adhered to solid particles for subsequent labeling and measurement of cellular processes, and cell

populations in Invention II are adhered to solid particles upon which a required test compound is added, for subsequent labeling and measurement of effect by the test compound on the cell populations”.

Regarding Inventions I and III, the Examiner states, “Inventions I and III are related as product and process of use...In the instant case, the product as claimed may be used in capture assays requiring optical tweezers”. The Examiner further states, “Inventions II and III are related as product and process of use”, stating “...In the instant case, the product as claimed may be used in cell enrichment or selection procedures”.

In response to the restriction requirement, Applicant elects, with traverse, to prosecute the invention of Group I, namely, claims 1 and 5–13. The Applicant’s traversal is based on the Examiner’s statement that “Inventions I and II are unrelated”. Specifically, claim 1, and the claims ultimately dependent thereon (claims 5–13) is directed to a method for measuring cellular processes which is set forth in four steps numbered as i)–iv). The Invention of the Examiner’s Group II (claims 2, 3, and 4) recite the same methodology except that in step iii) a test compound is introduced into the reaction vessel to determine whether said test compound has an effect on cellular processes. As such, Applicant respectfully asserts that the processes are quite similar and related.

Indeed, Applicant respectfully submits that the processes have the same modes of operation, the same effects, and are measuring the same functions, namely a cellular process in one or more different populations of cells. The only difference is the inclusion of the test compound in claims 2–4, but Applicant respectfully submits that such does not distinguish the claims from each other. Further, Applicant respectfully submits that examining claims 1–13 as a single entity would not place an undue burden on the Examiner, inasmuch as the searches would be nearly the same.

In view of the foregoing, Applicant respectfully request that the Examiner withdrawn the restriction requirement as to Groups I and II and examine claims 1–13 in the captioned application.


Claims 14–19 stand withdrawn from current consideration. Applicant will cancel unelected claims as soon as Notice of Allowability of the elected claims is received.

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Applicant believes that claims 1-13 are in allowable form, and earnestly solicits
their allowance.

Respectfully submitted,

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